

that the plaintiff could have made a genuine mistake about the boundary of the land which he had purchased in 1957 and overlooked the existence of the erection on the disputed land.

In my opinion, a purchaser of the calibre and business acumen of the plaintiff could not have easily made such a mistake and I am inclined to accept his version that, in August 1957, the disputed land was vacant. I am fortified in this view by the existence of a party wall which stretches all the way alongside one length of the lot in question including that part where the disputed land lies and against which wall the shed has been constructed. It may well be that the defendant, as occupier of the neighbouring premises at B Oxley Rise, may have, from time to time from 1932 onwards, cleared the jungle on this disputed land to drive out snakes and graze his cows thereon, but I am not prepared to believe without further evidence that he had reduced this land to his own effective and exclusive possession until after 1957. It may also well be that he dug an underground air-raid shelter there in 1941. It is well known that the digging of trenches and shelters was undertaken almost on a national basis as part of the war effort during the period immediately before and following the first bombing of Singapore on 8th December, 1941 and, in fact, the authorities encouraged the construction of trenches and shelters on vacant land adjoining buildings. The defendant admits that he was told to build a shelter but he does not say who told him to do so. He further says that he was afraid to occupy B Oxley Rise because of bombing and yet from what I myself saw, on inspection it is only a short distance away from the disputed land. Apart from what the defendant says there is a dearth of evidence as to what happened between the years 1932 and the outbreak of the Japanese war. Nor is there any corroborative rebuttal of the plaintiff's assertion that the land was vacant in August, 1957. In the absence of such evidence or satisfactory evidence as to the age of the structure it is impossible for me to conclude that the plaintiff is barred by section 9 of the Limitation Ordinance, 1959 since the defendant has failed to discharge the onus on him of proving possession adverse to the plaintiff and his predecessors in title.

The plaintiff therefore succeeds in his claim for vacant possession of the disputed land and for an order of demolition of the unauthorised building known as 73-D Oxley Rise. In order not to cause him undue hardship it seems to me possible to allow the defendant some reasonable time within which to move out. I think 6 months would be reasonable before the order for demolition becomes effective.

I assess damages for trespass in the nominal sum of \$10 having regard to all the circumstances of this case.

Costs will follow the event.

Judgment for the plaintiff.

Solicitors: *Laycock & Ong; Lee & Lee.*

A LEONG AH HONG v. HUP SENG CO. LTD.

[O.C.J. (Suffian J.) February 21, 1963]

[K.L. — Originating Summons No. 40 of 1962]

Company law — Dissatisfaction with administration of the company — Companies Ordinance, 1940, ss.15 and 116(2) — Application for meeting under s.116(2) — Impracticability of holding a meeting of the company.

The applicant, a member of the respondent company and other shareholders were dissatisfied with the administration of the company. They instituted a suit (No. 457 of 1961 reported in [1962] M.L.J. 371) praying for a declaration that a meeting held under section 115 of the Companies Ordinance and the resolution passed at the meeting were valid. While that suit was pending, the applicant in this matter applied to the court stating that since its formation there had only been one statutory meeting of the company that it was undesirable that the members of the company wait indefinitely until an annual general meeting be held and in view of the pending civil suit it would be impossible for the company to convene or conduct a meeting in the usual or proper manner and he therefore asked that the court should exercise its power under section 116(2) and order a meeting of the company to be called.

Held: (1) it was not enough that the applicant satisfy the court as to the impracticability of calling or conducting a meeting;

(2) the impracticability must extend to calling a meeting in any manner in which meetings of that company may be called or to conduct the meeting of the company in manner prescribed by the articles or the Ordinance;

(3) Civil Suit No. 457 of 1961 having been determined on 20th August, 1962, it was no longer impracticable to call a meeting.

Case referred to:—

(1) *In re El Sombrero Ltd.* [1958] 1 Ch. 900.

SUMMONS.

M. W. Maxwell (Yong Joon Hong with him) for the applicant.

T. K. Sen for the respondent.

Suffian J.: The facts of this case are as stated in a preliminary written judgment I read on 31st May, 1962, and its background may also be gathered from a perusal of my judgment in *Kuala Lumpur Civil Suit No. 457 of 1961, (Hup Seng Co. Ltd. v. Chin Yin & Ors. [1962] M.L.J. 371).*

The applicant, a member of the respondent company, and others like him were dissatisfied with the administration of the company. Desiring to replace the present directors, they requisitioned a meeting under section 115 of the Companies Ordinance, but the directors refused to convene the requisitioned meeting, whereupon the dissatisfied members of the company held a meeting under sub-section (3) of that section on the 9th July, 1961 when they passed certain resolutions including one to dismiss the old directors and elect new ones in their place. The old directors refusing to give effect to these resolutions, the dissatisfied members of the company filed civil suit No. 457 of 1961 praying for a declaration among other things that the resolutions passed on 9th July, 1961 were valid. The applicant in this matter said that since its formation the company had only held the one statutory meeting, it had never held any other

meeting, it might be months before civil suit No. 457 of 1961 was determined and it was most undesirable and against the interest of the members of the company to wait indefinitely before an annual general meeting could be held and that in view of the dispute and pending the determination of the civil suit it would be impossible for the company to convene or conduct a meeting in the usual or in a proper manner and he therefore asked that the Court should exercise its power under sub-section (2) of section 116 and order a meeting of the company to be called to discuss:

(a) who should be directors of the company; and

(b) whether the land bought by the members of the company from Mrs. Brown should be transferred to trustees.

Sub-section (2) of section 116 reads as follows:—

"If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or this Ordinance, the Court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, order a meeting of the company to be called, held and conducted in such manner as the Court thinks fit....."

The only decision on the corresponding provision in the English Companies Act, 1948, is *In re El Sombrero Ltd.* ⁽¹⁾ where Wynn-Parry J. says—

"It is to be observed that the section opens with the words 'If for any reason' and therefore it follows that the section is intended to have, and, indeed, has by reason of its language, a necessarily wide scope. The next words are '..... it is impracticable to call a meeting of a company.....'. The question then arises, what is the scope of the word 'impracticable'? It is conceded that the word 'impracticable' is not synonymous with the word 'impossible'; and it appears to me that the question necessarily raised by the introduction of that word 'impracticable' is merely this: examine the circumstances of the particular case and answer the question whether, as a practical matter, the desired meeting can be conducted, there being no doubt, of course, that it can be convened and held."

There the company concerned had three members, namely the applicant with 900 shares and the respondents each with 50 shares. The respondents were already directors when the applicant acquired his shares, and had remained as directors. No general meeting of the company including the first annual general meeting, had ever been held and no annual return had been filed. The company's articles provided that the quorum at general meetings of the company should be two members present in person or by proxy and that, if within half an hour from the time appointed for a meeting the quorum should not be present, the meeting, if convened on the requisition of members, should be dissolved. Wynn-Parry J. held that in these circumstances it was impracticable to hold a meeting of the company, as the two directors could always see and always saw to it that there was no quorum for any meeting and he accordingly granted the application, directing that one member of the company present in person or by proxy should be deemed to constitute a quorum.

In my judgment, in a matter such as the one before me it is not enough for the applicant to satisfy me that it is impracticable to call or conduct a meeting; he must further satisfy me that it is impracticable to call a meeting of the company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in manner prescribed by the articles or the Ordinance. In the case cited the applicant satisfied the Court that while it was possible to convene and hold a meeting it would be impracticable to conduct it in manner prescribed by the articles or the Act, as the other two members of the company always ensured the lack of a quorum.

But here I do not think that the applicant could have satisfied the learned Senior Assistant Registrar, from whose decision this appeal is, and has not satisfied me that the articles or the Ordinance make it impracticable to call or conduct a meeting of the company. The pending civil suit No. 457 of 1961, which made it uncertain who were and who were not directors of the company, did make it impracticable to call or conduct a meeting of the company, but that suit is no longer pending, having been determined on the 20th August, 1962. In these circumstances I feel obliged to dismiss this application. Accordingly this appeal by the company is allowed.

As regards costs, I said when delivering judgment in civil suit No. 457 of 1961 that I shall consider the costs in these two matters together. Having considered the representations of the parties, I am of the opinion that in that civil suit there shall be no order regarding costs, it being my view that the assets of this company are better preserved for the benefit of its unfortunate members rather than be squandered away in litigation and that in this summons the applicant shall pay the respondent's costs.

Application dismissed.

Solicitors: P. T. Wong & Co.; T. K. Sen & Co.

LOW KAR YIT & ORS. v. MOHAMED ISA & ANOR.

[O.C.J. (Gill J.) February 23, 1963]

[K.L. — Civil Suit No. 547 of 1961]

Contract — Sale of land — Option to purchase piece of land — Option subject to "formal contract to be drawn up" — Exercise of option by plaintiffs — Refusal to complete by defendants — Whether there was binding agreement — Specific performance — Contracts (Malay States) Ordinance, 1950, s.7.

Land Laws — Sale of land — Subject to "formal contract to be drawn up" — Option — Exercise of — Defendant refusing to complete — Specific performance.

The defendants gave an option to the agent of the plaintiffs to buy a piece of land subject to (a) a formal contract to be drawn up and agreed upon by the parties and (b) the approval of the sale and of the said contract by the High Court at Kuala Lumpur. The plaintiffs' agent duly exercised the option and on the defendant's